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Promotion and protection of the right to freedom of opinion and expression

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression, David Kaye, submitted in accordance with Human Rights Council resolution 25/2.

* A/70/150.

** The present document was submitted late owing to the need to consult partners.

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Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression

Summary

In the report, submitted in accordance with Human Rights Council resolution 25/2, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression addresses the protection of sources of information and whistle-blowers. Everyone enjoys the right to access to information, an essential tool for the public's participation in political affairs, democratic governance and accountability. In many situations, sources of information and whistle-blowers make access to information possible, for which they deserve the strongest protection in law and in practice. Drawing on international and national law and practice, the Special Rapporteur highlights the key elements of a framework for the protection of sources and whistle-blowers.

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I. Introduction

1. On matters of public concern, how does information that is unjustifiably hidden become known? In some situations, formal oversight mechanisms and access to information laws compel disclosure. Even where they do exist, however, they are not always effective. Other approaches may be needed, for as a general rule, secrets do not out themselves. Rather, disclosure typically requires three basic elements: a person with knowledge who is willing and able to shed light on what is hidden; a communicator or a communication platform to disseminate that information; and a legal system and political culture that effectively protect both. Without that combination — source, dissemination and protection — what is secret all too often remains hidden, and the more that remains hidden, the less authorities are held accountable and individuals are able to make informed decisions about matters that may most affect them and their communities.

2. Those are the principal rationales for legal and political frameworks that promote and guarantee access to information and protect the individuals and organizations that often make such access possible. Notwithstanding formal progress, Governments, international organizations and private entities often target persons disclosing secret information, in particular when they bring to light uncomfortable truths or allegations. Those who wish to call attention to malfeasance may find internal channels blocked, oversight bodies ineffective and legal protection unavailable. The absence of recourse often forces whistle-blowers to become sources for public disclosure, which may make them vulnerable to attack. International, regional and national trends toward greater formal protection do not necessarily translate into effective protection for sources and whistle-blowers. Ineffective protection results from gaps in law; a preference for secrecy over public participation; technology that makes it easy for institutions to breach privacy and anonymity; overly broad application of otherwise legitimate restrictions; and suspicion or hostility towards sources, whistle-blowers and the reporters who make such information known.

3. The disclosure of secret information runs across a broad spectrum, with some instances, such as Edward Snowden's revelations of surveillance practices, making a deep and lasting impact on law, policy and politics, while others struggle for attention and response. While the present report may be read in the light of all such cases, the Special Rapporteur does not analyse herein specific situations, but aims instead to highlight the main elements that should be part of any framework protecting sources and whistle-blowers consistent with the right to freedom of expression. He begins by reviewing everyone's right to receive information of all kinds, especially information held by public bodies. He then highlights the principal elements of the international legal frameworks for source and whistle-blower protection, while also drawing on the practice of States, international and regional mechanisms and non-governmental initiatives. The report concludes with a set of recommendations.

4. As part of the preparations for the present report, a questionnaire was sent to States seeking input on national laws and practices, to which 28 States responded.[1]

[1] By August 2015, the following States had responded: Angola, Argentina, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Colombia, Cuba, Estonia, Finland, Georgia, Germany, Ghana, Guatemala, Ireland, Kazakhstan, Morocco, Mauritania, Netherlands, Norway, Oman, Republic of Korea, Saudi Arabia, Slovakia, Switzerland, Suriname, Trinidad and Tobago, Turkey and United States of America.

Civil society organizations and individuals also contributed with critically important submissions. State responses and submissions, along with recommendations for further research into best practices, which could not be cited in the report, are available on the web page of the Special Rapporteur.[2] On 11 June 2015, a meeting convened in Vienna drew upon civil society and academic expertise in source and whistle-blower protection.[3] The Special Rapporteur thanks all who made contributions to the preparation of the present report.

II. Right of access to information

A. Legal foundation

5. Source and whistle-blower protections rest upon a core right to freedom of expression. Article 19 of the Universal Declaration of Human Rights guarantees the right to seek, receive and impart information and ideas through any media and regardless of frontiers. The International Covenant on Civil and Political Rights enshrines the same rights in its article 19, which emphasizes that the freedom applies to information and ideas of all kinds. Sources and whistle-blowers enjoy the right to impart information, but their legal protection when publicly disclosing information rests especially on the public's right to receive it. That right has been emphasized by previous special rapporteurs and experts in the European, African and inter-American systems.[4] As indicated in general comment No. 34 of the Human Rights Committee on article 19: Freedoms of opinion and expression, it extends to information held by all public bodies, whether legislative, executive or judicial, and it applies to other entities when they are carrying out public functions (paras. 7 and 18.) The right to receive information advances several principles that underlie and animate human rights.[5] It advances the individual's ability to seek out information of all kinds, allowing the development of opinions protected against interference under article 19 (1) of the Covenant.[6] It encourages participation in public affairs, which is independently protected by article 25 of the Covenant. It encourages accountability, increasing the costs for those who might engage in wrongdoing.

6. Regional and international human rights instruments also advance the public's right to receive information.[7] The Convention on the Rights of the Child obliges States parties to ensure that children have access to information in order to support individual development and a capacity to participate in public life (art. 17). The

[2] See www.ohchr.org/EN/Issues/FreedomOpinion/Pages/ProtectionOfSources.aspx.

[3] The meeting was jointly organized by the International Press Institute and the Government of Austria, with the generous support of the latter.

[4] See, for example, the joint declaration by the Special Rapporteur on freedom of opinion and expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media and the Organization of American States Special Rapporteur on Freedom of Expression (1999) (E/CN.4/2000/63, annex I).

[5] See Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation* (London, 1999).

[6] See general comment No. 25 of the Human Rights Committee on the right to participate in public affairs, voting rights and the right of equal access to public service; Inter-American Court of Human Rights, *Claude-Reyes et al. v. Chile* (2006); and A/HRC/14/23, para. 31.

[7] See the African Charter on Human and Peoples' Rights, art. 9; the American Convention on Human Rights, art. 13; and the Convention for the Protection of Human Rights and Fundamental Freedoms, art. 10.

Convention on the Rights of Persons with Disabilities requires States parties to promote appropriate forms of assistance and support to persons with disabilities to ensure their access to information (art. 9 (2) (f)). The Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and the Special Rapporteur on extreme poverty and human rights have highlighted the importance of the right of access to information to the realization of social and economic rights (see A/HRC/20/15 and A/HRC/23/36). The right is further reflected in international standards on the environment, efforts to combat corruption and development.[8]

7. International bodies, recognizing the role played by the media in providing access to information, emphasize the importance of protecting "a free, uncensored and unhindered press or other media" (see general comment No. 34 of the Human Rights Committee, para. 13). The right to information is grounded in the public's right to know "information of public interest" (see A/68/362, para. 19). The Security Council has affirmed that the work of a free, independent and impartial media constitutes one of the essential foundations of a democratic society (see Council resolutions 2222 (2015) and 1738 (2006)). The General Assembly in 2014 and 2015 called upon States to maintain a safe environment for journalists to work independently and without undue interference (see Assembly resolutions 68/163 and 69/185). The Human Rights Council in 2012, in its first resolution on the protection of journalists, highlighted the need to ensure greater protection for all media professionals and for journalistic sources (see Council resolution 21/12).

B. Restrictions on the right to information

8. In adopting the International Covenant on Civil and Political Rights and other measures, Governments did not preclude themselves from keeping certain kinds of information hidden from public view, but because article 19 promotes so clearly a right to information of all kinds, States bear the burden of justifying any withholding of information as an exception to that right. Article 19 (3) provides that any restriction on freedom of expression must be provided by law and be necessary to achieve one or more of the enumerated legitimate objectives, which relate to respect of the rights or reputations of others or to the protection of national security or of public order or of public health or public morals (see A/HRC/29/32, paras. 30-35). Limitations must be applied strictly so that they do "not put in jeopardy the right itself" (see Human Rights Committee, general comment No. 34, para. 21), a point that the Human Rights Council emphasized when it urged States not to restrict the free flow of information and ideas (see Council resolution 12/16).

9. Three considerations deserve emphasis. First, to be necessary, a restriction must protect a specific legitimate interest from actual or threatened harm that would otherwise result. As a result, general or vague assertions that a restriction is necessary are inconsistent with article 19. However legitimate a particular interest may be in principle, the categories themselves are widely relied upon to shield information that the public has a right to know. It is not legitimate to limit

[8] See the Rio Declaration on Environment and Development, principle 10; the United Nations Convention against Corruption, art. 13; and "Transforming our world: the 2030 Agenda for Sustainable Development" (General Assembly resolution 69/315, annex).

disclosure in order to protect against embarrassment or exposure of wrongdoing, or to conceal the functioning of an institution.[9]

10. Second, under the well-accepted proportionality element of the necessity test, disclosure must be shown to impose a specific risk of harm to a legitimate State interest that outweighs the public's interest in the information to be disclosed. If a disclosure does not harm a legitimate State interest, there is no basis for its suppression or withholding (see general comment No. 34 of the Human Rights Committee, para. 30). Some matters should be considered presumptively in the public interest, such as criminal offences and human rights or international humanitarian law violations, corruption, public safety and environmental harm and abuse of public office.[10] The importance of the public's interest has been emphasized repeatedly in other regional mechanisms.[11] National laws relating to the right to information also commonly provide for a public interest analysis.[12]

11. Third, restrictions on access to information must not be left to the sole discretion of authorities. Restrictions must be drafted clearly and narrowly, designed to give guidance to authorities, and subjected to independent judicial oversight (see A/HRC/29/32, paras. 29-33). Layers of internal governmental oversight should ensure that restrictions on access to information meet the standards of article 19 and related national laws.

12. Effective access to information begins with how Governments categorize, or classify, information as secret or otherwise not subject to disclosure. Over-classification occurs when officials deem material secret without appropriately assessing the public's interest in access to it or determining whether disclosure would pose any risk to a legitimate interest. Secrecy should be imposed only on information that would, if disclosed, harm a specified interest under article 19 (3); even in the event of a risk of harm, a process should be in place to determine whether the public interest in disclosure outweighs that risk. Processes that allow for evaluation of classification decisions, within institutions and by the public, including penalties for over-classification, should be considered and adopted in order to ensure the greatest possible access to information in the public interest. The Swedish Constitution and its Freedom of the Press Act provide perhaps a welcomed translation of the principle of maximum disclosure when it comes to access to information held by public bodies, protecting the right of all public officials to communicate information and, except for specified situations, prohibiting public officials from sanctioning others for communicating information outside their institutions.

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[9] See Article 19, International Centre against Censorship, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, principle 2 (b), in E/CN.4/1996/39, annex. See also A/HRC/20/17, A/HRC/13/37 and A/HRC/29/32.

[10] See the Global Principles on National Security and the Right to Information, principle 37; and Maeve McDonagh, "The public interest test in FOI legislation", available from www.right2info.org/resources/publications/eu-mcdonagh-maeve-the-public-interest-test-in-foi-legislation/view.

[11] See Council of Europe, recommendation CM/Rec(2014)7, p. 5; African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression in Africa, principles IV (2) and XII (2); and Inter-American Commission on Human Rights, Inter-American Declaration of Principles on Freedom of Expression, principle 10.

[12] See, for example, Supreme Court of Slovenia, *Ranc v. Ministry of Internal Affairs*, 10 October 2007.

13. While the Special Rapporteur evaluates herein legal frameworks, law alone is a necessary but insufficient basis for protection of any right under the umbrella of freedom of expression. A strong formal framework on the right to information will not overcome an official culture of secrecy and disrespect for the rule of law. Protection requires a political and bureaucratic culture that values transparency and public participation. An independent judiciary and legal profession, broad and non-discriminatory access to justice, and basic law enforcement capacity and willingness to confront violence and intimidation form the basic infrastructure of protection.

III. Protection of sources of information

A. Norm of confidentiality

14. Everyone depends upon well-sourced stories in order to develop informed opinions about matters of public interest. Professional reporting organizations emphasize that named sources are preferable to anonymous ones.[13] Nonetheless, reporters often rely upon, and thus promise confidentiality to, sources who risk retaliation or other harm if exposed.[14] Without protection, many voices would remain silent and the public uninformed.

15. International human rights law has developed well-established principles protecting source confidentiality. At the international level, such rules derive from the guarantee of the right to seek, receive and impart information enshrined in article 19 of the International Covenant on Civil and Political Rights.[15] The European Court of Human Rights celebrates the "vital public watchdog role of the press" as underlying source protection and has established a high level of protection for journalists who are reporting on matters of public interest.[16] In May 2015, the East African Court of Justice ruled that journalists could not be compelled to reveal sources merely because the information they provided related to national security or defence.[17] The Inter-American Commission on Human Rights has emphasized that "every social communicator has the right to keep his/her source of information,

[13] See The Canadian Association of Journalists Ethics Advisory Committee, "Ethics guidelines" (2011). See also Reuters, "The Essentials of Reuters sourcing"; and One Caribbean Media Limited, "Statement of Editorial Principles and Operational Guidelines".

[14] See, for example, David Banisar, "Silencing sources: an international survey of protections and threats to journalists' sources" (Privacy International Global Survey Series, 2007); and Julie Posetti, "Protecting journalism sources in the digital age", United Nations Educational, Scientific and Cultural Organization (UNESCO) Series on Internet Freedom (UNESCO Publishing, 2015).

[15] See the United Nations Convention against Corruption, art. 33; and general comment No. 34 of the Human Rights Committee, para. 45. See also United Nations Special Rapporteur on freedom of opinion and expression, the Organization for Security and Cooperation in Europe Representative on Freedom of the Media, the Organization of American States Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples' Rights Special Rapporteur on Freedom of Expression and Access to Information, "Joint declaration on defamation of religions, and anti-terrorism and anti-extremism legislation" (2008).

[16] See European Court of Human Rights, *Goodwin v. United Kingdom*, application No. 17488/90, judgement of 27 March 1996, para. 39; *Sunday Times v. United Kingdom*, application No. 6538/74, judgement of 26 April 1979; and *Tillack v. Belgium*, application No. 20477/05, judgement of 27 February 2007.

[17] See *Burundi Journalists Union v. Attorney General of the Republic of Burundi*, East African Court of Justice, case No. 7 of 2013, judgement of 15 May 2015, paras. 107-111.

notes, personal and professional archives confidential".[18] The African Commission on Human and People's Rights has stated that "media practitioners shall not be required to reveal confidential sources of information or to disclose other material held for journalistic purposes", except where meeting certain specified exceptions.[19] The Committee of Ministers of the Council of Europe recommends that States provide "explicit and clear protection of the right of journalists not to disclose information identifying a source".[20] International criminal tribunals also protect sources.[21]

16. National legal systems have also widely adopted the norm of protection of confidentiality. In a strong statement of legal protection, the 2010 Media Services Act of Estonia establishes that persons who are "processing information for journalistic purposes shall have the right not to disclose the information that would enable identification of the source of information" (sect. 15 (1)). The 1987 German Code of Criminal Procedure establishes a right to refuse to testify on professional grounds (sects. 53 (1(5)) and (2)). In Sweden, the Fundamental Law on Freedom of Expression of 1991 prohibits journalists from disclosing their sources and has criminalized the non-consensual disclosure of source identity (chap. 2, arts. 3-5). The Constitution of Cabo Verde guarantees that "no journalist shall be forced to reveal his sources of information" (art. 48 (8)). The laws of Argentina, Bosnia and Herzegovina, Bulgaria, Chile, Colombia, India, Mozambique and the Philippines are among the many other States in which the principle of source protection is recognized.[22]

B. Those who may invoke source confidentiality

17. Confidential sources rely on others to invoke the right to confidentiality on their behalf. Historically, States have enabled a professional class of journalists to invoke the right, but the revolution in the media and in information over the past 20 years demands reconsideration of such limitations. Article 19, which protects freedom of expression through any media, requires that States take into account a contemporary environment that has expanded well beyond traditional print and broadcast media. The protection available to sources should be based on the function of collection and dissemination and not merely the specific profession of "journalist". The practice of journalism is carried out by "professional full-time

[18] See Inter-American Commission on Human Rights, Declaration of Principles on Freedom of Expression, principle 8. The Special Rapporteur for Freedom of Expression of the Inter-American Commission has stated that "sources and materials related to the disclosure of confidential information must be protected by law", see Annual Report of the Inter-American Commission on Human Rights 2013: *Annual Report of the Office of the Special Rapporteur for Freedom of Expression*, vol. II (Washington, D.C., 2013), chap. IV, para. 171.

[19] See African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression in Africa, principle XV.

[20] See Council of Europe, Committee of Ministers recommendation No. R (2000) 7, appendix, principle 1.

[21] See, for example, *Prosecutor v. Radoslav Brdjanin and Momir Talic*, case No. IT-99-36-AR73.9, judgement of 11 December 2002.

[22] See Constitution of Argentina (1994), sect. 43; Law on protection against defamation of Bosnia and Herzegovina, art. 9; Bulgaria, Law for the Radio and Television (1998), art. 10 (1 (3)); Chile, Law 19.733 of 2001, art. 7; Constitution of Colombia (1991), arts. 73-74; India, Whistle Blowers Protection (Amendment) Bill (2015), sect. 6; Constitution of Mozambique (2005), art. 48 (3); Philippines Republic Act No. 53, as amended by Republic Act No. 1447.

reporters and analysts, as well as bloggers and others who engage in forms of self-publication in print, on the Internet or elsewhere" (Human Rights Committee, general comment No. 34, para. 44).

18. Today, journalists and other "social communicators" may claim the right of confidentiality for the source.[23] Persons other than journalists inform the public and carry out a "vital public watchdog role". International bodies increasingly use terms more general than "journalist", such as "media professionals" or "media workers".[24] The African Commission on Human and Peoples' Rights refers to "media practitioners"[25] and the Organization for Security and Cooperation in Europe Representative on Freedom of the Media refers to "new participants in journalism".[26] All those terms demonstrate an understanding that those performing the same journalistic functions should enjoy the right to protect sources. The Council of Europe has defined the term "journalist" functionally as "any natural or legal person who is regularly or professionally engaged in the collection and dissemination of information to the public via any means of mass communication".[27] For the purposes of source protection — when, as the Norwegian Supreme Court has noted, the broadest protection should be available[28] — any person or entity involved in collecting or gathering information with the intent to publish or otherwise disseminate it publicly should be permitted to claim the right to protect a source's confidentiality. Regular, professional engagement may indicate protection, but its absence should not be a presumptive bar to those who collect information for public dissemination.[29]

19. Two categories, for example, expand beyond officially recognized journalists. First, there are those who most closely reflect the professional engagement in collection and dissemination: members of civil society organizations who conduct research and issue findings, and researchers — academics, independent authors, freelance writers and others — who regularly participate in gathering and sharing information publicly. It is common for such people to adopt and publish methodologies that underscore the degree of professionalism upon which their work depends. Many non-governmental organizations are themselves publishers of well-sourced content that, in form and substance, is virtually identical to the work of the press, often the result of thorough research, in-the-field reporting and analysis.[30] It is common for human rights researchers to rely upon sources who require confidentiality for safety.[31] Recognizing a broad scope of protection, the European Court of Human Rights indicated that "non-governmental organisations, like the press, may be characterised as social 'watchdogs.' In that connection their activities

[23] See Inter-American Commission on Human Rights, Declaration of Principles on Freedom of Expression, principles 8 and 13.

[24] See, for example, Human Rights Council resolutions 27/5 and 21/12; General Assembly resolution 68/163; and Security Council resolution 1738 (2006).

[25] See the Declaration of Principles on Freedom of Expression in Africa, principle XV.

[26] See 2nd Communiqué on Open Journalism. Available at www.osce.org/fom/128046?download=true.

[27] Council of Europe, Committee of Ministers recommendation No. R (2000) 7, appendix, definition (a).

[28] See Supreme Court of Norway, case No. 2013/1196, reference No. HR-2013-2170-A (2013).

[29] Posetti, "Protecting journalism sources in the digital age".

[30] See, for example, www.hrw.org/about-our-research.

[31] See *Youth Initiative for Human Rights v. Serbia*, European Court of Human Rights, application No. 48135/06, judgement of 25 June 2013.

warrant similar Convention protection to that afforded to the press".[32] The Information Commissioner's Office in the United Kingdom of Great Britain and Northern Ireland granted a non-governmental organization, Global Witness, an exemption from the national Data Protection Act because its work, and those of other non-media organizations, "constitutes a journalistic purpose even if they are not professional journalists and the publication forms part of a wider campaign to promote a particular cause".[33] In Canada, a judge of the Superior Court of Quebec upheld a researcher's right to protect confidential information.[34]

20. Second, "citizen journalists" and bloggers and other media "non-professionals" engage in independent reporting and disseminate their findings through a wide variety of media, from print and broadcast to social media and other online platforms.[35] They frequently work in ways similar or identical to, or even more rigorous than, the work of traditional journalists. Some States have adopted rules that provide important protection for them. For example, the Irish High Court, in *Cornec v. Morrice and Ors*, found that bloggers might claim source protection because they could constitute an "organ of public opinion" and because the right to influence public opinion would be jeopardized if they were forced to disclose their sources.[36]

C. Nature and scope of protection

21. Some authorities refer to a journalistic "privilege" not to disclose a source's identity, but both reporter and source enjoy rights that may be limited only according to article 19 (3).[37] Revealing or coercing the revelation of the identity of a source creates disincentives for disclosure, dries up further sources to report a story accurately and damages an important tool of accountability. In the light of the importance attached to source confidentiality, any restrictions must be genuinely exceptional and subject to the highest standards, implemented by judicial authorities only.[38] Such situations should be limited to investigations of the most serious crimes or the protection of the life of other individuals.[39]

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[32] See European Court of Human Rights, Österreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land- und forst-wirtschaftlichen Grundbesitzes v. Austria, application No. 39534/07, judgement of 28 November 2013.

[33] See letter from Information Commissioner's Office to Global Witness, 15 December 2014. Available from www.globalwitness.org/sites/default/files/141215%20letter%20from%20ICO%20to%20GW%20(2)%20(1).pdf.

[34] See *Parent and Bruckert v. Her Majesty the Queen*, Province of Quebec District of Montreal, case No. 500-36-006329-125, judgement of 21 January 2014. See also *Dotcom v. Her Majesty's Attorney-General*, Supreme Court of New Zealand, case No. [2014] NZSC 199, judgement of 23 December 2014.

[35] See A/65/284; see also Council of Europe, Committee of Ministers recommendation CM/Rec(2011)7.

[36] Irish High Court, *Cornec v. Morrice and Ors*, 2012, para. 66. See also California Court of Appeals, *O'Grady v. Superior Court (Apple)*, 2006.

[37] See *Tillack v. Belgium*, European Court of Human Rights, application No. 20477/05, judgement of 27 February 2008.

[38] See Council of Europe, Committee of Ministers recommendation No. R (2000) 7, appendix, principles 3 and 5.

[39] See A/HRC/20/17, para. 109. See also A/HRC/7/14.

22. National laws should ensure that protections apply strictly, with extremely limited exceptions. Under Belgian law, journalists and editorial staff may be compelled by a judge to disclose information sources only if they are of a nature to prevent crimes that pose a serious threat to the physical integrity of one or more persons, and upon a finding of the following two cumulative conditions: (a) the information is of crucial importance for preventing such crimes; and (b) the information cannot be obtained by any other means. The same conditions apply to investigative measures, such as searches, seizures and telephone tapping, with respect to journalistic sources.[40]

23. Protection must also counter a variety of contemporary threats. A leading one is surveillance. The ubiquitous use of digital electronics, alongside government capacity to access the data and footprints that all such devices leave behind, has presented serious challenges to confidentiality and anonymity of sources and whistle-blowers.[41] The problem of unintended self-disclosure has been a recurrent feature in the leading cases involving journalistic sources in recent years, in which the Government of the United States of America discovered probable source identities through telephone and e-mail records.[42] Writers themselves report concern that their ability to protect sources is much diminished in the face of surveillance.[43] National and regional courts in Europe have appropriately criticized extralegal approaches to compromising confidentiality. The Italian Supreme Court of Cassation, for example, protected the telephone records of a journalist because they were openly instrumental to the identification of those who had provided confidential information.[44] The European Court of Human Rights emphasized the importance of providing "the individual adequate protection against arbitrary interference" caused by surveillance.[45] The Committee of Ministers of the Council of Europe recommends that interception, surveillance and other digital searches "should not be applied if their purpose is to circumvent" source protection.[46]

24. Journalists are often subjected to searches of their persons, homes or offices, including their papers, hard drives and other digital devices. In addition to the normal rules that apply to such searches, a higher burden should be imposed in the context of journalists and others gathering and disseminating information.[47] The United States Privacy Protection Act of 1980, for example, protects journalists and others from searches and seizures of their work product, while the Police and Criminal Evidence Act of 1984 of the United Kingdom excludes journalistic

[40] See Banisar, "Silencing sources".

[41] See Posetti, "Protecting journalism sources in the digital age".

[42] See, for example, *United States of America v. Sterling*, 724 F.3d 482 (2013).

[43] See PEN America, "Chilling effects: NSA surveillance drives U.S. writers to self-censor" (New York, 2013); and Human Rights Watch and American Civil Liberties Union, "With liberty to monitor all: how large-scale U.S. surveillance is harming journalism, law and American democracy" (New York, 2014).

[44] See decision of the Supreme Court of Cassation, Sixth Criminal Chamber, 21 January 2004, No. 85, concerning the appeal filed by Paolo Moretti against a ruling by the Court of Como.

[45] See *Telegraaf Media Nederland Landelijke Media B.V. and Others v. the Netherlands*, European Court of Human Rights, application No. 39315/06, judgement of 22 November 2012, para. 90.

[46] See Council of Europe, Committee of Ministers recommendation No. R (2000) 7, appendix, principle 6 (a).

[47] See *Canadian Broadcasting Corp. v. Lessard*, Supreme Court of Canada, case No. 21629, report No. [1991] 3 S.C.R. 421; and the Federal Constitutional Court of Germany, 1 BvR 538/06, judgement of 27 February 2007.

material from the scope of seizure authorities.[48] The Code of Criminal Procedure of France enables searches of the offices of media only where "such investigations do not violate the freedom of exercise of the profession of journalist and do not unjustifiably obstruct or delay the distribution of information".[49]

25. Source protection extends beyond the immediate reporting person to include editors, publishers and others engaged in the work. In Norway, the Dispute Act of 2005 provides that editors and media staff may refuse to provide access to evidence about who is the author of an article or report in the publication or the source of any information contained therein. The Criminal Code in Switzerland provides similar protection to refuse to identify sources; the Press Law of 2004 in Turkey provides that periodical owners and editors cannot be forced to either disclose their news sources or to legally testify on that issue; and the Press Law of 2006 in Angola extends protection against compelled disclosure to editors.[50]

IV. Protection of whistle-blowers

26. States have responded to the problem of hidden wrongdoing with laws to protect those who take steps to report it. However, individuals who report alleged wrongdoing are still subjected to harassment, intimidation, investigation, prosecution and other forms of retaliation. All too often, States and organizations implement the protections only in part or fail to hold accountable those who retaliate against whistle-blowers. Moreover, beyond law, the right to information also requires a bedrock of social and organizational norms that promote the reporting of wrongdoing or other information in the public interest. The strengthening of such norms requires training at all levels of organizations, supportive policies and statements from political and corporate leaders, international civil servants, the courts and others, and accountability in cases of reprisals.

A. Legal protection of whistle-blowers

27. At least 60 States have adopted some form of whistle-blower protection as a part of their national laws.[50] The United Nations Convention against Corruption protects persons who report corruption offences; the Council of Europe has recommended broad whistle-blower protections; and the Organization of American States has adopted a model law on the protection of whistle-blowers.[51] International organizations have adopted protections that, to some extent, mirror national practice. The following principles draw on international law, State practice and a range of civil society projects; they are not exhaustive of the legal, policy and drafting issues in framing whistle-blower protections.

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[48] See United States, Title 42 U.S. Code sect. 2000aa; United Kingdom of Great Britain and Northern Ireland, Police and Criminal Evidence Act (1984).

[49] Code of Criminal Procedure of France, art. 56-2.

[50] See Banisar, "Silencing sources".

[51] See United Nations Convention against Corruption, art. 33; Council of Europe, recommendation CM/Rec(2014)7, appendix; Organization of American States, Model Law to Facilitate and Encourage the Reporting of Acts of Corruption and to Protect Whistle-blowers and Witnesses (2013).

1. The term "whistle-blower" should be broadly defined and focus attention on alleged wrongdoing

28. International authorities and national jurisdictions adopt a variety of definitions of whistle-blowing. In the present report, the Special Rapporteur adopts a broad definition in order to account for relevant purposes of whistle-blowing, in particular the right to know, accountability and democratic governance. For the purposes of the present report, a whistle-blower is a person who exposes information that he or she reasonably believes, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest, such as a violation of national or international law, abuse of authority, waste, fraud, or harm to the environment, public health or public safety.

29. Protection laws often limit whistle-blowers to those who blow the whistle "in the context of their work-based relationship".[52] However, a person may come into contact with public interest information even when outside such a relationship. The United Nations Convention against Corruption contains no employment limitation. Broad definitions are also found in, for example, Ghanaian law, which protects employees and "any person" making a disclosure, and Indian law, which covers "any public servant or any other person including any non-governmental organisation".[53] Non-work-related whistle-blowers may include patients who blow the whistle on wrongdoing in a hospital, parents who blow the whistle on wrongdoing in a child's school and students themselves. Typically, a whistle-blower will enjoy a work status, but because of the range of others who may report wrongdoing allegations, such as consultants, interns, job applicants, students, patients and others who do not enjoy a legally protected relationship with an organization, such a limitation is not recommended.[54]

30. Protection mechanisms should promote disclosure and not require potential whistle-blowers to undertake precise analyses of whether perceived wrongdoing merits penalty under existing law or policy. Otherwise, the protection itself would be hollow, encouraging disclosure and signalling potential retaliation at the same time. In general, a reasonable belief requirement may encourage whistle-blowing based on thoughtful consideration of the facts known to a person at the time of disclosure. Whistle-blowers who, based on a reasonable belief, report information that turns out not to be correct should nonetheless be protected against retaliation.

31. The whistle-blower's motivations at the time of the disclosure should also be immaterial to an assessment of his or her protected status.[55] Variation centres around the inclusion of "good faith" as an element of reporting, from the exclusion of a good faith requirement, to a good faith requirement only in the context of compensation as a remedy for retaliation, to inclusion of both "good faith" and reasonable belief.[56] "Good faith," however, could be misinterpreted to focus on the

[52] See Council of Europe, recommendation CM/Rec(2014)7, appendix, definition (a). See also United Kingdom Public Interest Disclosure Act 1998.

[53] See Ghana, Whistleblower Act 720, sect. 12 (2006); India, The Whistle Blowers Protection Act, 2011, chap. II, sect. 4 (1).

[54] See, for example, Serbia, draft law on protection of whistle-blowers (2013), art. 7.

[55] See the Global Principles on National Security and the Right to Information, principle 38. According to the Norwegian Working Environment Act, bad faith does not rule out lawful reporting.

[56] See United Nations Office on Drugs and Crime, *United Nations Convention against Corruption: Resource Guide on Good Practices in the Protection of Reporting Persons* (New York, 2015).

motivation of the whistle-blower rather than the veracity and relevance of the information reported. It should not matter why the whistle-blower brought the information to attention if he or she believed it to be true. Irish law serves as a model, given that it provides that "the motivation for making a disclosure is irrelevant to whether or not it is a protected disclosure".[57] Application of protection should focus on the public interest information underlying the whistle-blowing. Bosnia and Herzegovina, addressing that problem, seeks to protect against the risk of focusing on motivation by defining good faith as meaning the stance of the whistle-blower "based on facts and circumstances of which the whistle-blower has his or her own knowledge and which he or she deems to be true".[58] In Zambia, the Public Interest Disclosure Act (2010) protects disclosures made by an employee in reasonable belief and limits the relevance of motivation to when a person discloses "for purposes of personal gain, excluding any reward payable in terms of any law".[59]

2. Public interest information should be disclosed

32. Whistle-blowing does not always involve specific individual wrongdoing, but it may uncover hidden information that the public has a legitimate interest in knowing. International authorities and States often provide a general protection for the disclosure of information in the public interest, or disclosure of specific categories of information, or both. The Council of Europe Committee of Ministers recommends that States adopt protections for those who report threats or harms to the public interest, which it says "should, at least, include violations of law and human rights, as well as risks to public health and safety and to the environment".[60] Zambian law provides an extensive definition that covers a range of maladministration, abuse of public trust, criminal and disciplinary offences and waste or fraud.[59] The legislation of the United States specifies violations of a law, rule or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; and a substantial and specific danger to public health and safety.[61] While the term "public interest" may appear capacious as a basis for whistle-blower protection, a State might define "public interest" as involving information that contributes to public debate, promotes public participation, exposes serious wrongdoing, improves accountability or benefits public safety.[62]

33. Regardless of the approach taken, the scope of protected disclosures should be easily understandable by potential whistle-blowers. Legalistic definitions may lead potential whistle-blowers not to report because of a lack of clarity about what is covered by a protection framework.[56]

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[57] See Ireland, Protected Disclosures Act 2014, part 2, sect. 5 (7).

[58] See Bosnia and Herzegovina, Law on Whistleblower Protection in the institutions of Bosnia-Herzegovina, art. 2 (h).

[59] See Zambia, Public Interest Disclosure (Protection of Whistleblowers) Act (2010), part III, sect. 22 (a) (ii).

[60] See Council of Europe, recommendation CM/Rec(2014)7, appendix, sect. I (2), and explanatory memorandum CM(2014)34 addfinal, para. 43.

[61] See Whistleblower Protection Enhancement Act of 2012 and Whistleblower Protection Act of 1989.

[62] See Parliamentary Assembly of Council of Europe, Committee on Legal Affairs and Human Rights, Memorandum of Arcadio Díaz Tejera, document No. 13293, 3 September 2013, para. 46. The Irish Protected Disclosures Act 2014 provides a list of matters which qualify as relevant wrongdoings.

3. Internal institutional and external oversight mechanisms should provide effective and protective channels for whistle-blowers to motivate remedial action; in the absence of such channels, public disclosures should be protected and promoted

34. When working properly, internal mechanisms provide a way for someone who perceives wrongdoing to seek a competent authority's investigation. They allow for timely attention by those who may be in the best position to address problems, while also providing a basis for balancing legitimate interests in secrecy and the redress of wrongdoing. However, internal mechanisms present potential whistle-blowers with serious risks. They often lack strong measures of confidentiality and independence from the organization in which they are embedded, putting whistle-blowers at risk of retaliation. Many mechanisms are widely perceived as ineffective, so that the risk of retaliation may appear too great in the face of low odds of success. For those reasons, among others, studies suggest that employees have relatively low confidence in whistle-blowing mechanisms.[63] If States aim to have working whistle-blowing procedures that reduce public disclosure, they must ensure the effectiveness and trust in the full independence of whistle-blowing processes.

35. When whistle-blowers reasonably perceive that an internal process lacks effective redress and protection, they should have access to two other permissible avenues of disclosure. One would be external but not public, such as a government-wide ombudsman or oversight institution or a legislative oversight body. Belgium, Ireland, New Zealand, the Republic of Korea and the United Kingdom, among others, provide explicitly for various forms of external but non-public whistle-blowing.[56] The legislation of Ghana provides for protected disclosures to nearly 20 categories of competent recipients apart from the whistle-blower's employer.[64] At the same time, it is critical that, once a whistle-blower makes a disclosure outside his or her institution, the law does not hold the person to any pre-existing duties of confidentiality owed to the employer.

36. Whistle-blowers may reasonably perceive that neither internal nor oversight mechanisms provide effective protection or a likelihood of addressing wrongdoing. They may leave whistle-blowers exposed to retaliation and the absence of redress even if the formal legal framework and the mechanisms appear sufficiently protective. Whistle-blowers often reasonably doubt that such protections will work for them; the more a State can demonstrate that whistle-blowing results in changed institutional behaviour, individual accountability and protection, the more likely it is that whistle-blowers will not go public. When a Government seeks to prosecute or otherwise penalize a publicly disclosing whistle-blower, the burden should be on the State to show that the whistle-blower's perceptions of non-protection or non-redress were unreasonable.

37. Where other mechanisms to disclose information about wrongdoing are unavailable or ineffective, the whistle-blower may disclose information of alleged wrongdoing to external entities, either the media or others in civil society, or by self-publishing. The public-disclosure whistle-blower in such circumstances should be protected. The European Court of Human Rights weighs six factors in assessing

[63] See Public Concern at Work and the University of Greenwich, *Whistleblowing: The Inside Story* (London, 2013); Stephen Bolsin, Rita Pal, Peter Wilmshurst and Milton Pena, "Whistleblowing and patient safety: the patient's or the profession's interests at stake?", *Journal of the Royal Society of Medicine*, vol. 104, No. 7 (July 2011).

[64] See Ghana, Whistleblower Act 720, sect. 3 (1) (2006).

the legitimacy of restrictions imposed on those who make public disclosure. Those factors are whether the whistle-blower had available any "competent authority" to which he or she could make disclosure, or "any other effective means of remedying the wrongdoing"; the public interest in the information, which "can sometimes be so strong as to override even a legally imposed duty of confidence"; the information's authenticity, requiring a person to "carefully verify, to the extent permitted by the circumstances, that it is accurate and reliable"; the damage that the public institution may suffer by public disclosure, including whether it outweighs the public's interest in knowing the information; the motive and good faith of the whistle-blower, which could implicate the "level of protection" available; and an evaluation of the proportionality of the penalty imposed upon the whistle-blower.[65]

38. Notwithstanding such balancing, the public may have an exceptionally strong right to know about some kinds of information or allegations, such that they override even potentially effective internal or oversight processes. For example, public disclosure of serious violations of international human rights law, international humanitarian law or other fundamental rights in a State's constitutional or statutory framework should be encouraged regardless of the effectiveness of internal mechanisms. The same may hold true where the value of the public's knowledge of the information depends upon its timely or urgent disclosure. The public has an overriding interest in knowing of allegations of serious violations of fundamental legal norms (see A/68/362).

4. Whistle-blowers should be guaranteed confidentiality and the possibility of anonymity in their reporting

39. Maintaining the confidentiality of whistle-blowers may be especially difficult, depending on the nature, size and scope of the institution. Even so, whistle-blower laws should protect strongly against the risk that persons who disclose facts that indicate wrongdoing may be subject to personal attack and other forms of retaliation. Guarantees and mechanisms of confidentiality provide important protection against retaliation. States should not breach the confidentiality of the source by putting pressure on the media or any other organization or person to whom the whistle-blower disclosed the information. Whistle-blowing mechanisms should provide for secure submissions and take other steps to ensure the confidentiality of disclosures, including by defining intentional or negligent breaches of confidentiality as a form of retaliation subject to penalty.[66]

40. Some institutions permit anonymous disclosures in order to enable people to report without identifying themselves to any competent authority. Unlike confidentiality guarantees, in which a whistle-blower is known to the internal mechanism, anonymous disclosure should allow individuals to provide information without identifying themselves to anyone in the internal mechanism. Anonymity has some drawbacks; it may diminish the ability of authorities to conduct follow-up, or encourage frivolous or malicious reporting. In situations in which few persons enjoy access to disclosed information, reporting persons may be easily exposed. However,

[65] See European Court of Human Rights, application No. 14277/04, judgement of 12 February 2008, paras. 73-78. See also *Heinisch v. Germany*, application No. 28274/08, judgement of 21 July 2011 and *Bucur and Toma v. Romania*, application No. 40238/02, judgement of 1 August 2013.

[66] Austria, Bosnia and Herzegovina and Mexico have initiatives promoting anonymous reporting.

anonymous reporting provides a safeguard for those situations where the potential whistle-blower lacks confidence in the ability of existing legal mechanisms to provide protections against retaliation and yet wishes not to make a public disclosure. It enables a focus on the elements of the disclosure rather than on the person. Moreover, those who make anonymous disclosures who are later exposed should still receive whistle-blower protections.[67]

5. Whistle-blowers must be protected from the threat or imposition of retaliation, remedies should be made available to targets and penalties should be imposed on those who retaliate

41. Without protection against retaliation and the possibility of redress, few would disclose wrongdoing. Protection should be detailed explicitly in law, providing whistle-blowers and others with clarity about the nature of the protection that they may seek. In particular, whistle-blowers must be protected against coercion or harassment of themselves or their families, discrimination, physical harm to a person or property, threats of retaliation, job loss, suspension or demotion, transfer or other hardship, disciplinary penalty, blacklisting or prosecution on grounds of breach of secrecy laws, libel or defamation.[56] In the event of investigation or prosecution, whistle-blowers should be permitted to raise all of the principles identified above in their defence, especially that the disclosure was to protect a specified public interest that outweighed harm to a governmental interest. Whistle-blower laws should provide a mechanism to redress wrongdoing and prohibit those forms of retaliation, among others.

42. Impunity for reprisals sends a message to all potential whistle-blowers that the institution lacks commitment to their protection, while serious and effective penalties are necessary to overcome the structural and cultural protection of secrecy. Whistle-blower laws should therefore include specific rules that make clear the penalties that those who commit reprisals will face, including civil or criminal repercussions for officials in leadership positions. Zambian law, for example, provides for substantial penalties (fines and imprisonment) against "a person who takes any detrimental action that is in reprisal for a person who makes a protected disclosure".[68]

B. Whistle-blowing and national security

43. States have long sought to keep secret information that, if disclosed, could undermine efforts to protect the public from grave harms such as terrorism or armed conflict. The protection of confidential information is a necessary by-product of some government activity, and article 19 (3) recognizes the legitimacy of limitations to protect specific interests such as national security. Institutions that operate in national security, such as institutions of defence, diplomacy, internal security and law enforcement, and intelligence, may have a greater claim not to disclose information than other public bodies, but they have no greater claim to hide instances of wrongdoing or other information where the value of disclosure

[67] See Slovakia, Act No. 307/2014 Coll. on Certain Measures Related to the Reporting of Antisocial Activities and on Amendments to Certain Acts (2015).

[68] Zambia, Public Interest Disclosure Act (see footnote 59 above). See also Norway, Dispute Act, sect. 2-5 (2005).

outweighs the harm to the institution. Yet whistle-blower protections are often weak, or simply unavailable, in the area of national security and intelligence. Those who disclose wrongdoing in national security institutions are often subject to retaliation, such as job loss or transfer, denial or revocation of security clearance, and investigation, prosecution and harsh sentencing, and they lack redress because of legal doctrines that support an infrastructure of secrecy. Whistle-blowing's main function thus loses all force, and while the lack of protection ultimately denies members of the public access to critical information about their Government, national security institutions also lose a tool of accountability.

44. In 2013, dozens of organizations, academic institutions and experts from 70 countries — including the special rapporteurs on freedom of expression in the United Nations and the African, European and Inter-American systems — concluded a two-year study of national security and the right to information. The resulting Global Principles on National Security and the Right to Information, known as the Tshwane Principles, provide guidance for States seeking to balance their interests in protecting information and ensuring the public's right to know. The principles and their detailed explanatory discussions deserve widespread study and implementation. Already, the Council of Europe has recognized that a special whistle-blower framework applicable in the context of national security may be valuable.[69]

1. Full coverage

45. All of the principles identified above should apply in the context of national security, modified as appropriate according to the principles below. Full coverage means that no institution should be accorded such a wide measure of discretion as to eliminate the protections themselves. National security institutions enjoy secrecy as a norm of behaviour. Moreover, non-disclosure is often buttressed by a network of secrecy and espionage laws — often with harsh criminal penalties — that all but eliminate genuine whistle-blower protection, in particular by removing the whistle-blower's ability to advocate on the basis of the public's interest in the disclosed information. In those situations, States should rationalize their laws so that whistle-blower protections, and the public interest basis for them, apply regardless of the institution involved.

46. Where internal or external oversight mechanisms have not operated or do not operate so as to provide protection and effective redress in the face of a disclosure, the following principles apply generally in the context of external, public disclosure.

2. Narrowly and clearly define prohibited disclosures

47. States may find it appropriate to apply specific rules to public national security disclosures. To be consistent with article 19 (3), they should nonetheless strictly adhere to the standard that restrictions be necessary and proportionate to protect national security. National security exclusions have traditionally involved information about ongoing defence plans, weapons systems and communications,

[69] See Council of Europe, recommendation CM/Rec(2014)7, appendix, sect. II (5). See also Parliamentary Assembly of the Council of Europe, "Improving the protection of whistle-blowers", document No. 13791 (19 May 2015).

critical infrastructure and intelligence operations, sources and methods.[70] States have also long protected sensitive security-related diplomatic activity. National security restrictions on disclosure should apply only in such situations, and disclosure should not be limited in the absence of the Government's showing of "a real and identifiable risk of significant harm to a legitimate national security interest".[71] Law should clearly define what may be withheld from disclosure. A "legitimate national security interest" must be genuine, not a cover for "protection of government or officials from embarrassment or exposure of wrongdoing; concealment of information about human rights violations, any other violation of law, or the functioning of public institutions; strengthening or perpetuating a particular political interest, party, or ideology; or suppression of lawful protests".[72]

3. Promote public interest disclosures that outweigh any identifiable harm to a legitimate national security interest

48. To satisfy the principle of proportionality, the relevant institution should also be prepared to show that the harm to the specific legitimate national security interest outweighs the public interest in disclosure. The Tshwane Principles propose that public disclosure should be protected where the internal or oversight mechanism would be ineffective, futile or lack timeliness in the face of a serious threat. Furthermore, reflecting a point of general applicability, the whistle-blower should disclose only the "amount of information that was reasonably necessary to bring to light the wrongdoing" and do so on the reasonable belief that the public interest in disclosure outweighed any harm to any specific and legitimate national security interest.[73] Any disclosures that meet those tests should merit full protection. Those principles should be available to whistle-blowers whether they are claiming protection or defending themselves against investigation or prosecution.

4. Sanctioned disclosures

49. The question posed most sharply in the national security area is whether, when individuals assess the balance between public interest disclosure and national security harm, they should lose the protection they would otherwise enjoy if their assessment differs from that of the Government, as is likely. Criminal or civil penalties may advance the Government's interest in concealing certain information, but they do so at a steep cost to the public interest in ensuring that whistle-blowers do come forward to disclose instances of wrongdoing or other information that it is in the public's interest to know.

50. Where States nonetheless pursue criminal or civil penalties against whistle-blowers, limiting the spillover risk of deterring whistle-blowing should involve three critical protections. First, in any such action, States should bear the burden of proving that the harm to a legitimate national security interest outweighed the public interest in disclosure. Second, States should provide defendants with the basic tools of defence, including access to the information necessary for a defence, relaxation of secrecy laws in the context of closed court sessions if necessary and the ability to make a genuine case that disclosure's benefit outweighed the asserted

[70] See the Global Principles on National Security and the Right to Information, principle 9.
[71] Ibid., principle 3 (b).
[72] Ibid. To be clear, the relevant national law must also be consistent with international law.
[73] Ibid., principle 40.

harm. Lastly, in the event of a conviction or penalty, sentences or fines must be proportionate to the underlying act, including taking into account the extent to which the whistle-blower's disclosure advanced the public interest, even if a court found the harm to national security to outweigh the value of disclosure.

C. Whistle-blowing in international organizations

51. The principles of whistle-blower protection adopted by States and regional mechanisms apply with equal force in the context of international organizations. The United Nations and other international organizations have adopted rules and regulations with the purpose of enabling whistle-blowing and prohibiting retaliation against those who disclose wrongdoing.[74] Nonetheless, allegations of retaliation against whistle-blowers plague international organizations.[75]

52. Basic structural gaps in international organizations leave whistle-blowers at risk in ways that those who report wrongdoing in national systems may avoid. In particular, nearly all international organizations are opaque to the public, which has limited access to information, and few have effective policies on access to information. As bureaucratically dominated organizations, they avoid the strict scrutinization by the press that is often found in national contexts, and they are naturally isolated from direct contact with members of the public or the press. They are, moreover, subject to reputational demands in order to maintain financial and political support of Governments. Furthermore, persons who report wrongdoing have limited access to independent systems of justice. They generally lack access to national courts when complaining about retaliation, and the human rights bodies are unlikely to apply protection in the face of retaliation. The immunities enjoyed by international organizations in national and other external jurisdictions result in minimal legal pressure on the organizations to respond effectively to allegations of wrongdoing. The mechanisms themselves generally face substantial problems of independence because of those structural barriers.

53. The track record for whistle-blowers in the United Nations system reinforces the difficulties. Very few whistle-blower complaints are fully investigated. Between 2006 and 2014, only 15 cases of a total of 403 "inquiries" sent to the Ethics Office of the United Nations were found to meet prima facie standards for retaliation, while only 4 were established as retaliatory cases. The low numbers, in a system of more than 40,000 employees, are likely to send a message to employees that the reporting system will not provide effective protection or redress. Some international organizations do have strong formal protections for whistle-blowers.[76] However, all international organizations should adopt the principles applicable in national situations and consider at least the following steps to improve their approaches.

54. First, whistle-blower definitions should apply broadly to encourage all disclosures of wrongdoing that implicate the interests of the organization and all stakeholders, including Governments and civil society. As it stands, many

[74] See ST/SGB/2005/21; World Bank, staff rule 8.02: Protections and Procedures for Reporting Misconduct (Whistleblowing) (2008).

[75] See Government Accountability Project, "International best practices for whistleblower policies" (2013).

[76] See African Development Bank Group, "Whistle-blowing and complaints handling policy" (Tunis, 2007), sect. 4.

organizations' protections apply to reports of staff failures to comply with obligations, rather than applying to the full range of wrongdoing of which a person may gain knowledge. A public interest standard for reporting would cover a wider scope of wrongdoing to which the United Nations and its staff become privy. Policies should also protect all whistle-blowers from retaliation, not just staff members but others who may be associated with the organization.

55. Second, the existing mechanisms, while well-intentioned, lack real independence and effectiveness. As long as internal reporting channels require implementing actions by various individuals in the organization's management, they will fail to enjoy the credibility that comes with independent review. Whistle-blowers should enjoy access to formal justice mechanisms, not merely mechanisms that, as is the case with the Ethics Office at the United Nations, involve only recommendatory powers. Punishment of those who retaliate should be serious, not merely disciplinary, and should include the possibility of removal from their post and personal liability.

56. Third, international organizations — and the States that established and support them — should adopt serious and effective policies of transparency to enable the public to have greater access to information. The public should enjoy access not only to information about the policies and practices of the organizations, but also to information about whistle-blowing. Subject to the requirements of privacy protections, investigations of whistle-blowing complaints should avoid the strictures of confidentiality, providing for public knowledge of complaints. As it stands, whistle-blowing complaints are very rarely made public, or if they are, such publicity follows only after years of delay and secrecy.

57. Lastly, those who identify wrongdoing — especially evidence of serious legal violations and human rights abuses, such as sexual and gender-based violence — should be protected from retaliation when they make public disclosures to the media, civil society or Governments. To be sure, disclosures should respect the rights and reputations of others, but in the absence of effective internal systems, external disclosure provides a necessary safety valve to promote accountability and ensure that the public has information about serious wrongdoing.

V. Conclusions and recommendations

58. **A common thread ties together the right of access to information, the protection of sources of information and the protection of whistle-blowers: the public's right to know. Human rights law protects the right to seek, receive and impart information and ideas of all kinds, while also permitting restrictions of the right on narrow, specified grounds. When the right and the restriction clash, as they are often purported to do, Governments and international organizations should not adopt laws and policies that default in favour of the restrictions. Rather, laws should favour disclosures of information in the public interest. In cases of source and whistle-blower disclosures, public institutions have most of the power — the power to intimidate, to investigate, to prosecute. They also have greater access to information and, thus, the ability to make their case, while the source or whistle-blower typically has only a window into broader policies and practices, hindered by secrecy laws that preclude an adequate defence. If a disclosure genuinely harms a specified legitimate State**

interest, it should be the State's burden to prove the harm and the intention to cause harm. States and international organizations are urged to adopt or revise laws accordingly, consistent with the well-recognized centrality of the right to freedom of expression and access to information in democratic governance.

59. Basic protections are critical to an effective right to freedom of expression, accountability and democratic governance. Individual cases of disproportionate treatment and retaliation against sources and whistle-blowers have been in the public eye over recent years, relating to intelligence agencies, asylum programmes, public health, environmental protection, corruption in the business and financial sectors, international organizations and many other domains. The Special Rapporteur has avoided mentioning specific cases in the present report. Moving forward, the principles identified in the present report will be applied in communications with Governments and international organizations on specific cases. The Special Rapporteur looks forward to a dialogue with Governments to help to improve their legal frameworks and establish effective protection of sources and whistle-blowers.

A. Recommendations to States

Ensure that national legal frameworks provide for the right of access to information in accordance with international standards

60. National legal frameworks establishing the right to access information held by public bodies should be aligned with international human rights norms. Exceptions to disclosure should be narrowly defined and clearly provided by law and be necessary and proportionate to achieve one or more of the above-mentioned legitimate objectives of protecting the rights or reputations of others, national security, public order, or public health and morals.

Adopt or revise and implement national laws protecting the confidentiality of sources

61. National legal frameworks must protect the confidentiality of sources of journalists and of others who may engage in the dissemination of information of public interest. Laws guaranteeing confidentiality must reach beyond professional journalists, including those who may be performing a vital role in providing wide access to information of public interest such as bloggers, "citizen journalists", members of non-governmental organizations, authors and academics, all of whom may conduct research and disclose information in the public interest. Protection should be based on function, not on a formal title.

62. Any restrictions on confidentiality must be genuinely exceptional and subject to the highest standards, and implemented by judicial authorities only. Circumventions, such as secret surveillance or metadata analysis not authorized by judicial authorities according to clear and narrow legal rules, should not be used to undermine source confidentiality. States should promote tools, such as encryption and anonymizing programs, to ensure protection of sources. Authorities compelling revelation of sources must demonstrate that reasonable alternative measures to the disclosure do not exist or have been exhausted and that the legitimate interest in the disclosure clearly outweighs

the public interest in the non-disclosure. These should be limited to investigations of the most serious crimes or the protection of life.

Adopt or revise and implement national legal frameworks protecting whistle-blowers

63. State law should protect any person who discloses information that he or she reasonably believes, at the time of disclosure, to be true and to constitute a threat or harm to a specified public interest, such as a violation of national or international law, abuse of authority, waste, fraud or harm to the environment, public health or public safety. Upon disclosure, authorities should investigate and redress the alleged wrongdoing without any exception based on the presumed motivations or "good faith" of the person who disclosed the information.

64. Internal institutional and external oversight mechanisms should provide effective and protective channels for whistle-blowers to motivate remedial action. In the absence of channels that provide protection and effective remediation, or that fail to do so in a timely manner, public disclosures should be permitted. Disclosure of human rights or humanitarian law violations should never be the basis of penalties of any kind.

65. Protections against retaliation should apply in all public institutions, including those connected to national security. Given that prosecutions generally deter whistle-blowing, States should avoid them, reserving them, if at all, for exceptional cases of the most serious demonstrable harm to a specific legitimate interest. In such situations, the State should bear the burden of proving an intent to cause harm, and defendants should be granted (a) the ability to present a defence of an overriding public interest in the information, and (b) access to all information necessary to mount a full defence, including otherwise classified information. Penalties should take into account the intent of the whistle-blower to disclose information of public interest and meet international standards of legality, due process and proportionality.

Establish personal liability for those who retaliate against sources and whistle-blowers

66. Acts of reprisals and other attacks against whistle-blowers and the disclosure of confidential sources must be thoroughly investigated and those responsible for those acts held accountable. When the attacks are condoned or perpetrated by authorities in leadership positions they consolidate a culture of silence, secrecy and fear within institutions and beyond, deterring future disclosures. Leaders at all levels in institutions should promote whistle-blowing and be seen to support whistle-blowers, and particular attention should be paid to the ways in which authorities in leadership positions encourage retaliation, tacitly or expressly, against whistle-blowers.

Actively promote respect for the right of access to information

67. Law enforcement and justice officials must be trained to ensure the adequate implementation of standards establishing protection of the right to access information and the consequent protections of confidentiality of sources and whistle-blowers. Authorities in leadership positions should publicly

recognize the contribution sources and whistle-blowers make by sharing information of public relevance and should condemn attacks against them.

68. State entities should also support civil society organizations that are expert in the areas of access to information, protection of journalists and their sources, and whistle-blower promotion and protection. Many such organizations may offer technical advice and training. States should ensure that civil society can participate fully in all efforts to adopt or revise source and whistle-blower laws, regulations and policies.

B. Recommendations to the United Nations and other international organizations

69. All the above recommendations to States apply to the United Nations and other international organizations. In addition, the United Nations and international organizations should adopt effective norms and policies of transparency to enable the public to have greater access to information. Specific norms protecting whistle-blowers should follow similar criteria to those provided in the recommendations to States: wide scope of application, promotion of disclosure of information in the public interest and clarity in the mechanisms for reporting and requesting protection. Particular attention must be paid to the effectiveness and independence of existing reporting and justice mechanisms, given the lack of access of whistle-blowers to any other formal justice system.

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Seventieth session
Item 73 (c) of the provisional agenda*
Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Democratic People's Republic of Korea

Note by the Secretary-General**

Summary

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea, Marzuki Darusman, in accordance with Assembly resolution 69/188.

The report provides an assessment of the latest developments on a number of thematic areas that were pointed out by the commission of inquiry on human rights in the Democratic People's Republic of Korea as requiring particular attention owing to the serious nature of the violations committed in those areas, namely summary executions, enforced disappearances, arbitrary detention, discrimination and trafficking. Whereas in the report it is noted that a few positive developments have taken place in the context of the momentum that was created by the commission of inquiry, grave violations continue to be committed on a large scale and particularly affect the most vulnerable groups, including prisoners, migrant workers and persons with disabilities. In the report the international community is called upon to step up efforts to protect the population of the Democratic People's Republic of Korea and hold the Government accountable for those gross violations. The Government of the Democratic People's Republic of Korea is also urged to take immediate and long-term actions to redress the situation and abide by its international human rights obligations.

* A/70/150.
** Late submission due to consultations with relevant stakeholders.

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Report of the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea

I. Introduction

1. The present report is submitted to the General Assembly by the Special Rapporteur on the situation of human rights in the Democratic People's Republic of Korea pursuant to General Assembly resolution 69/188.

2. In the present report, the Special Rapporteur takes a people-centred approach, as he deems it important to continue highlighting the dire plight of women, men and children victims of long-standing and ongoing systematic, widespread and gross human rights violations by the Government of the Democratic People's Republic of Korea, as identified by the commission of inquiry on the human rights situation in the country in its report issued in February 2014 (A/HRC/25/63). Regrettably, the situation remains the same, despite the grave concerns reiterated by the international community in different forums. The Special Rapporteur also reflects on issues around accountability for those human rights violations, which should be addressed at an early stage, and on current efforts by the international community to address the human rights situation in the Democratic People's Republic of Korea in general.

3. The Special Rapporteur wishes to highlight from the outset that in March and again in June 2015 he requested meetings with delegates from the Democratic People's Republic of Korea to follow up on the discussions that he had with them in October 2014 in New York. He regrets that his requests were declined. He firmly believes in the value of dialogue and hopes that the authorities will answer his future request positively.

4. Finally, the Special Rapporteur thanks all those who took the time to meet him in various places during the past year.

II. Latest developments

A. People trapped inside the country

1. Summary executions

5. In 2015, at the time of writing, the Supreme Leader of the Democratic People's Republic of Korea had ordered the executions of 15 individuals, by firing squad, on spying charges. Those executed reportedly include a forestry minister and another top official who challenged the Supreme Leader over his policies, as well as members of an orchestra. Reportedly, 1,382 persons were publicly executed between 2010 and 2014 (161 persons in 2008, 160 in 2009, 106 in 2010, 131 in 2011, 21 in 2012, 82 in 2013 and 5 in 2014). Reports of the alleged execution of the Defence Minister and of the poisoning of the Supreme Leader's aunt were also received with circumspection.[1]

[1] According to some media, the Government of the Democratic People's Republic of Korea confirmed the execution of the Defence Minister for insubordination. See, for example, www.upi.com/Top_News/World-News/2015/06/15/North-Korea-officially-confirmed-Hyon-Yong-Chols-execution-says-source/3271434354542/?spt=sec&or=tn.

6. The latest reported summary executions should be seen as part of a pattern of multiple executions of officials considered by the Supreme Leader as a threat to his rule since he took power in December 2011. According to sources, 31 officials were executed in 2014. The most notable case was the execution in December 2013 of the Supreme Leader's uncle, Jang Song Thaek, reportedly for "anti-party, counter-revolutionary factional acts in a bid to overthrow the leadership".

7. The Special Rapporteur reiterates his deep concern about those reported summary executions in total disregard of due process and other international human rights standards. He also reiterates concern about the practice of "guilt by association", whereby associates and family members of a person punished for a political or ideological crime similarly face punishment by being either executed or sent to prison camps.

2. Abductions and enforced disappearances

8. International abductions and enforced disappearances committed by the Government of the Democratic People's Republic of Korea are issues of utmost concern to the Special Rapporteur.

9. In March 2015, as recommended by the commission of inquiry on the situation of human rights in the Democratic People's Republic of Korea, the Special Rapporteur came up with a multitrack strategy aimed at addressing international abductions, enforced disappearances and related matters (A/HRC/28/71, paras. 29-84). The strategy seeks to maintain the momentum that has been built around the issue in the international arena and thus to continue to put pressure on the authorities from the Democratic People's Republic of Korea to resolve the issue to the satisfaction of victims, their families and the international community.

10. On 5 May 2015, the Special Rapporteur attended an international symposium hosted by the Government of Japan in New York on human rights violations, including abductions, by the Democratic People's Republic of Korea. He took part in a similar symposium held in Geneva in September 2014. He found both events particularly useful, as they contributed to maintaining the visibility and international understanding of the issue of international abductions by the Democratic People's Republic of Korea. Furthermore, both events reflected important elements of the aforementioned strategy. In his remarks, the Special Rapporteur highlighted the need for an international approach to the issue, with broad support from the international community and an active role for relatives of abductees and civil society at large in the implementation of the strategy. He pointed out the urgent need to solve the matter once and for all, as the victims who have survived and their families are, for the most part, well advanced in their years.

11. During his latest visit to Tokyo, in January 2015, the Special Rapporteur was informed that the national police agency was currently looking into 881 possible abduction cases relating to the Democratic People's Republic of Korea over the years. He was briefed on the latest developments in relation to the bilateral dialogue on the issue of abductions that started in 2014 between the Governments of the Democratic People's Republic of Korea and Japan. In October 2014, a delegation of senior Japanese officials travelled to Pyongyang to be apprised of the latest information in relation to the survey undertaken. However, the meeting was reported to have been unsatisfactory. At the time of writing, there was reportedly no progress on the part of the Democratic People's Republic of Korea in presenting a report on

the outcome of its survey, due by July 2015. Early in July 2015, the Democratic People's Republic of Korea informed Japan that it had been sincerely conducting comprehensive investigations on all Japanese nationals but that they would take a little longer, to which the latter in return urged the former to resolve all issues related to the Japanese nationals, including the return of all the victims of abductions, through expeditious investigations in accordance with the agreement in May 2014. The Special Rapporteur welcomes the important work that the Working Group on Enforced or Involuntary Disappearances has been undertaking over the years in tackling cases of abductions and disappearances allegedly committed by the Democratic People's Republic of Korea. In March 2015, during its 105th session, the Working Group brought four cases to the attention of the Government of the Democratic People's Republic of Korea, with regard to the situation of Mr. Kim Hyun Chul, Mr. Kim Hyun Il, Ms. Kim Hyun Ran and Mr. Kim Il Hyun, who were reportedly last seen in January 2011 at the Ranam-guyok security agency in Chongjin, North Hamkyung Province (A/HRC/WGEID/105/1, para. 36). The Special Rapporteur hopes that the Government will shed full light on those cases.

12. On 5 August 2014, the Government of the Democratic People's Republic of Korea wrote to the Working Group with regard to 27 outstanding cases. The Working Group deemed insufficient the information provided to clarify those cases (A/HRC/WGEID/104/1, para. 50).

13. The Special Rapporteur welcomes the country request issued by the Working Group on Enforced or Involuntary Disappearances on 22 May 2015 to visit the Democratic People's Republic of Korea (pursuant to his recommendation). The Special Rapporteur urges the Government of the Democratic People's Republic of Korea to respond positively to that request without delay.

3. Arbitrary detention

14. The Special Rapporteur continues to be deeply preoccupied by the ongoing arbitrary detention and acts of torture and ill-treatment of individuals in prison camps, as documented by the commission of inquiry (A/HRC/25/63, paras. 56-63). It is estimated that the Democratic People's Republic of Korea holds 80,000 to 120,000 political prisoners in five prison camps located in remote areas of the country, namely Camp Nos. 14, 15, 16, 18 and 25.[2]

15. The Special Rapporteur voices concerns about the ongoing detention of four individuals from the Republic of Korea (Kim Jeong-wook, Kim Kuk-gi, Choi Chun-gil and Joo Won-moon) who reportedly do not have access to their families or to government officials, despite several requests made by the Government of the Republic of Korea.

16. An additional testimony on detention conditions in Political Prison Camp No. 15 in Yodok was brought to the attention of the Special Rapporteur in July 2015 through a former inmate who was detained in the Seorimcheon district of the camp, known as the "revolutionizing" or "re-education" zone, from 2000 to 2003.[3] The

[2] Korean Institute for National Unification, white paper on human rights in North Korea (2015) (Korean version).

[3] The report was submitted to the Office of the United Nations High Commissioner for Human Rights (OHCHR) office in Seoul through the International Coalition to Stop Crimes against Humanity in North Korea.

account reinforces the evidence collected by the commission of inquiry on the systematic practice of torture and the appalling conditions of detention. It reconstitutes a list of 181 names out of approximately 400 prisoners who the witness believes were detained at that time, including the incumbent Minister of Information, Shim Cheol-Ho. The report states that the camp may have been dismantled in May 2015, possibly in reaction to the commission of inquiry's report, but the fate of the guards and inmates is unknown.

17. The Special Rapporteur recalls the human rights norms and standards governing deprivation of liberty, including articles 7 and 9 of the International Covenant on Civil and Political Rights, which the Democratic People's Republic of Korea ratified in 1981, the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment and the Standard Minimum Rules for the Treatment of Prisoners.

18. The Special Rapporteur welcomes the country request issued on 17 April 2015 by the Working Group on Arbitrary Detention to the Government of the Democratic People's Republic of Korea to visit the country. At the time of writing, a response to that request had not been received. Previously, the Working Group adopted several opinions under its regular communication procedure. In November 2013, it adopted opinion Nos. 34/2013 to 36/2013, concerning the detention of groups of individuals. In all three cases, the Working Group ruled the detention and deprivation of liberty to be arbitrary.

4. Persons with disabilities

19. The Special Rapporteur welcomes the statement by the Republic of Korea in May 2015 that it will provide 1 billion won ($917,000) to support persons with disabilities from the Democratic People's Republic of Korea.[4]

20. At the time of writing, the Government of the Democratic People's Republic of Korea had signed the Convention on the Rights of Persons with Disabilities[5] and accepted recommendations from the universal periodic review to expedite the ratification of the Convention (A/HRC/27/10, paras. 124.15-124.16). The Government had also accepted a number of other specific recommendations from the review concerning the rights of persons with disabilities (A/HRC/13/13; para. 90.98; A/HRC/27/10, paras. 124.31 and 124.178-124.179).

21. Despite a few encouraging signs that some measures may have been taken to improve the situation of persons with disabilities following the signature of the Convention on the Rights of Persons with Disabilities, including the promise of free medical care and specialized education, the ratification of the Convention has yet to be undertaken. In that regard, the Special Rapporteur calls upon the Democratic People's Republic of Korea to expedite that process and to accept offers of technical assistance on the matter.

22. The Special Rapporteur encourages the Special Rapporteur on the rights of persons with disabilities to request an invitation to visit the Democratic People's Republic of Korea, notably to closely examine the issue of disability-based

[4] "S. Korea to offer 1 bln to support handicapped in N. Korea", *The Korea Herald*, 19 May 2015. Available from www.koreaherald.com/view.php?ud=20150519001217.

[5] The Democratic People's Republic of Korea signed the Convention on the Rights of Persons with Disabilities on 3 July 2013.

discrimination, which was highlighted in the commission of inquiry's report as a continuing violation. Allegations on the possible use of persons with disabilities in medical testing, forced relocation to rural areas, and separation of children with disabilities from their parents deserve urgent attention.

23. The Special Rapporteur notes the lack of support by the international donor community and aid agencies to disability projects in the Democratic People's Republic of Korea, which further marginalizes persons with disabilities and increases their isolation and rejection by society. As pointed out by recent academic research on the matter,[6] international donors' decreased commitment to the Democratic People's Republic of Korea due to its poor human rights record has reduced opportunities for the Government and for disabled persons' organizations to benefit from international expertise and best practices in disability programmes. The Special Rapporteur recognizes the need for international donors working with the Democratic People's Republic of Korea to adopt a rights-based approach to humanitarian aid in general and to disability in particular.

B. People working outside the country

24. While the Special Rapporteur was on mission in the Republic of Korea in November 2014, his attention was drawn to the issue of nationals of the Democratic People's Republic of Korea being sent abroad by their Government to work under conditions that reportedly amount to forced labour.

25. The rationale behind that State-sponsored system appears to be to circumvent United Nations sanctions imposed on the country with a view to earning currencies. It is believed that the Government of the Democratic People's Republic of Korea earns through that system between $1.2 billion and $2.3 billion per year.[7]

26. According to various studies, it is estimated that more than 50,000 workers from the Democratic People's Republic of Korea operate abroad.[8] The vast majority are currently employed in China and the Russian Federation. Other countries where workers operate reportedly include Algeria, Angola, Cambodia, Equatorial Guinea, Ethiopia, Kuwait, Libya, Malaysia, Mongolia, Myanmar, Nigeria, Oman, Poland, Qatar and the United Arab Emirates.

27. The overseas workers are employed mainly in the mining, logging, textile and construction industries. Their conditions of work have been documented by civil society organizations[7,8] that conducted interviews with former overseas workers. They found that:

(a) The workers do not know the details of their employment contract;

[6] Katharina Zellweger, *People with Disabilities in a Changing North Korea* (Stanford, The Walter H. Shorenstein Asia-Pacific Research Centre, 2014). Available from http://fsi.stanford.edu/sites/default/files/Zellweger_Disabilities_DPRK_web.pdf.

[7] International Network for the Human Rights of North Korean Overseas Labour, "The conditions of North Korean overseas labour" (2012). Available from http://en.nksc.co.kr/wp-content/uploads/2014/08/INHL.pdf.

[8] Ibid. See also Shin Chang-Hoon and Go Myong-Hyun, *Beyond the UN COI Report on Human Rights in DPRK* (Asan Institute for Policy Studies, 2014). Available from http://en.asaninst.org/contents/asan-report-beyond-the-coi-dprk-human-rights-report.

(b) Tasks are assigned according to the worker's State-assigned social class (*songbun*): the lower classes are reportedly assigned the most dangerous and tedious tasks. Workers with relatives in the country are preferred, to ensure that they will fully comply while abroad;

(c) Workers earn on average between $120 and $150 per month, while employers in fact pay significantly higher amounts to the Government of the Democratic People's Republic of Korea (employers deposit the salaries of the workers in accounts controlled by companies from the Democratic People's Republic of Korea);

(d) Workers are forced to work sometimes up to 20 hours per day, with only one or two rest days per month. In some instances, if they do not fulfil the monthly quota imposed, they reportedly do not get paid;

(e) Health and safety measures are often inadequate. Safety accidents are reportedly not reported to local authorities but handled by security agents;

(f) Workers are given insufficient daily food rations;

(g) Freedom of movement of overseas workers is unduly restricted. Workers are under constant surveillance by security personnel from the Democratic People's Republic of Korea in charge of ensuring that they comply with the Government's rules and regulations. Those agents confiscate the workers' passports. The workers are also forbidden to return to the Democratic People's Republic of Korea during their assignment;

(h) Workers are threatened with repatriation if they do not perform well enough or commit infractions. Defectors apprehended are sent back to the Democratic People's Republic of Korea.

28. It is alleged that the host authorities never monitor the working conditions of overseas workers.

29. It is worth noting that the Government of the Democratic People's Republic of Korea is paying increased attention to the scrutiny by foreign media and organizations on its overseas workers. In April 2015, it issued instructions to overseas workers and supervisors to prevent anyone from reporting human rights abuses in the workplace. Workers and supervisors have reportedly been ordered to destroy any recording equipment, confiscate the memory cards and even assault the person documenting the abuses. Failure to do so would result in the worker or supervisor being punished, although it is not clear what type of punishment would be applied.[9]

30. The Special Rapporteur notes (with satisfaction) the decision in May 2015 of a construction company in Qatar to dismiss 90 employees from the Democratic People's Republic of Korea (nearly half of the workforce employed) for alleged repeated violations of domestic labour legislation. According to the company, "supervisors responsible for the well-being of their workers have been continuously forcing them to work more than 12 hours a day. The food provided to their workforce is below standards. Site health and safety procedures are ignored

[9] Radio Free Asia, "North Korea orders its overseas workers to hide rights abuses", 17 April 2015. Available from www.rfa.org/english/news/korea/authorities-order-overseas-workers-to-hide-rights-abuses-04172015162936.html.

regularly".[10] One of the workers reportedly died as a result of such treatment. The company agreed to keep the remaining workers from the Democratic People's Republic of Korea under the condition that they no longer breach any rules.

31. The Special Rapporteur takes all such reports very seriously. He intends to pay close and sustained attention to the issue in future, with the support of the Office of the United Nations High Commissioner for Human Rights (OHCHR) office in Seoul. To that end, he calls upon the Member States concerned to grant him, his successor and OHCHR staff access to verify all of the allegations.

32. The Special Rapporteur reminds the Democratic People's Republic of Korea of its obligation under article 8 of the International Covenant on Civil and Political Rights not to engage in forced labour. He stresses that companies hiring overseas workers from the Democratic People's Republic of Korea become complicit in an unacceptable system of forced labour. They should report any abuses to the local authorities, which have the obligation to investigate thoroughly, and end such partnership.

33. Finally, the Special Rapporteur encourages the Special Rapporteur on contemporary forms of slavery, including its causes and its consequences, to pay attention to the issue and to request to visit the country.

C. People fleeing the country

1. Defectors settling abroad and refoulement cases

34. According to the Ministry of Unification of the Republic of Korea, in 2014, 1,396 individuals from the Democratic People's Republic of Korea (1,092 women and 304 men) defected to the Republic of Korea. Between January and March 2015, 292 defectors arrived in the Republic of Korea: 241 women and 51 men. As at March 2015, there were 27,810 defectors in the Republic of Korea: 19,508 women and 8,302 men.[11]

35. However, defectors continue to face considerable risks in their attempt to seek asylum abroad. The Special Rapporteur remains concerned about repeated instances of refoulement to the country of origin by certain Member States of nationals of the Democratic People's Republic of Korea, who, in their attempt to flee the country, had entered those States' territories.

36. In that regard, the Special Rapporteur is strongly concerned by reports indicating that a group of 29 citizens of the Democratic People's Republic of Korea, including a 1-year-old child, were detained by the Chinese authorities in Shandong and Yunnan provinces between 15 and 17 July 2014 and subsequently forcibly returned to their country of origin.[12] Their whereabouts were unknown at the time of writing. In addition, in October 2014, the Chinese authorities reportedly arrested 11 individuals (10 adults and 1 child aged 7) from the Democratic People's Republic

[10] Voice of America, "Qatari company fires almost half its North Korean workforce", 7 May 2015. Available from www.insidevoa.com/content/voa-report-qatari-company-fires-almost-half-its-north-korean-workforce/2753918.html.

[11] Statistics obtained from the website of the Ministry of Unification of the Republic of Korea.

[12] Amnesty International, "Urgent action: families face forcible return to North Korea", 28 July 2014. Available from www.amnesty.org/en/documents/asa17/039/2014/en.

of Korea who were seeking to enter Myanmar in the southern region of Yunnan province.[13] Their whereabouts are also unknown.

37. The Special Rapporteur notes that the Committee against Torture included that case in its list of issues in relation to the fifth periodic report of China. It sought information about their fate upon return and enquired, inter alia, whether there were "post-return monitoring arrangements in place to ensure that those returned to the Democratic People's Republic of Korea are protected from the danger of being subjected to torture" (CAT/C/CHN/Q/5/Add.1, para. 9). He hopes that the Government of China will clarify the matter during the fifty-sixth session of the Committee, in November 2015.

38. The Special Rapporteur regrets that his requests to meet representatives of the Permanent Missions of China in Geneva and New York in March and May 2015, respectively, were unsuccessful. He remains available to engage in constructive dialogue with the Government of China to find a sustainable solution to that pressing issue.

39. According to reports, on 2 December 2014 two orphans who had defected from the Democratic People's Republic of Korea and had been forcibly returned by the Lao People's Democratic Republic in May 2013 were executed, while seven other orphans who had similarly defected were detained at Camp No. 14, located in Gaecheon-gun, Pyongan Namdo. The Special Rapporteur finds those reports deeply troubling.

40. The Special Rapporteur recalls that Member States to which defectors appeal for refuge and protection are under an international obligation not to return such individuals where the return would give raise to a real risk of irreparable harm, such as a threat to the right to life or a violation of the prohibition of torture.

2. Trafficking

41. The Special Rapporteur notes with great concern from the data provided by the Ministry of Unification on arrivals of defectors in the Republic of Korea that more than 70 per cent of the defectors are women. A striking estimate of 70-90 per cent of those women reportedly become victims of human trafficking and are subjected to, inter alia, forced marriage and sexual exploitation in China and in other Asian countries.[14] They are particularly vulnerable to actions by smuggling gangs, whose influence has significantly increased recently owing to the clampdown by Chinese authorities on charities and evangelical groups from the Republic of Korea that used to facilitate their escape through China.[15]

42. Female overseas workers from the Democratic People's Republic of Korea sent to China have also fallen victim to sexual exploitation. It was reported that, in

[13] Yonhap News Agency, "11 N. Korean defectors arrested in China", 31 October 2014. Available from http://english.yonhapnews.co.kr/national/2014/10/31/59/0301000000AEN20141031004300315F.html.

[14] Olivia Enos, "Human trafficking thrives where rule of law ends", *The Diplomat*, 16 March 2015. Available from http://thediplomat.com/2015/03/human-trafficking-thrives-where-rule-of-law-ends.

[15] David McKenzie, "Chinese 'snakehead' gangs offer only escape for North Korea's defectors", CNN, 19 November 2014. Available from http://edition.cnn.com/2014/11/19/world/asia/china-north-korea-defector-escape-mckenzie.

June 2014, the Government of China deported a group of female workers in a food factory because they were forced into prostitution at night, upon instructions from an executive of the factory and with the complicity of the security personnel from the Democratic People's Republic of Korea in charge of their surveillance. The latter was also forcibly repatriated.[16]

43. The Special Rapporteur stands ready to look at the above-mentioned situation in close cooperation with the States concerned and other United Nations human rights mechanisms, including the Special Rapporteur on trafficking in persons, especially women and children. The Special Rapporteur encourages China to consider accepting the request for a country visit made by the Special Rapporteur on trafficking in persons, especially women and children, in 2010.[17]

D. People-to-people contact

1. Separated families

44. The issue of separated families is of particular concern to the Special Rapporteur. According to the Korean Assembly for Reunion of Ten Million Separated Families, as at May 2015, of the 129,668 applicants for the reunions arranged by the Red Cross societies of the Democratic People's Republic of Korea and the Republic of Korea since 2000, only 1,956 had benefited from face-to-face meetings and 279 from video reunions. This represents 1.5 per cent and 0.2 per cent, respectively, of the total number of applicants. Most strikingly, nearly half of the applicants (62,028) have passed away during the past 15 years owing to their advanced age. The Special Rapporteur finds the situation very disconcerting and sincerely hopes that regular family reunions will resume without delay.

45. The Special Rapporteur deems it necessary to remind the Democratic People's Republic of Korea of its position, indicated prior to the second cycle of the universal periodic review, that it accepted a number of recommendations pertaining to the issue of separated families that had been made during the first review, in December 2009, namely: "guarantee separated families' fundamental right to know the fate of their family members across the border and to communicate and regularly meet together; do everything possible, in cooperation with the Republic of Korea, to ensure that the maximum number of meetings of separated families is organized; take concrete steps to continue the process of family reunification, because for the elder generation even a delay of one or two years means that their chance of seeing their relatives may be lost forever; [and] adopt measures to facilitate family reunification as recommended by the Special Rapporteur" (A/HRC/13/13, paras. 90.75-90.78).

2. Inter-Korean dialogue on issues of mutual interest

46. The Special Rapporteur regrets that there has been no progress on the inter-Korean dialogue, despite the statements made by both Governments in late 2014 and early in 2015 to resume such dialogue on issues of mutual interest. The date 15 June 2015 marked the fifteenth anniversary of the North-South Joint Declaration, by

[16] Radio Free Asia, "China deports North Korean workers forced into sex trade", 12 June 2014. Available from www.rfa.org/english/news/korea/deportation-06122014162010.html.

[17] See www.ohchr.org/EN/Issues/Trafficking/Pages/Visits.aspx.

which the Governments of the Democratic People's Republic of Korea and the Republic of Korea committed to making joint efforts towards reunification and to enhancing economic and cultural exchanges. It is regrettable that the Government of the Democratic People's Republic of Korea declined the proposals made by the Government of the Republic of Korea to engage in inter-Korean talks in the context of that important anniversary.

47. The Special Rapporteur cannot stress enough the importance of holding genuine dialogue and increased contact between people of both Koreas, in line with the commission of inquiry's recommendations (A/HRC/25/63, paras. 91-92). He welcomes the fact that the Government of the Republic of Korea has indicated that it will continue to provide humanitarian assistance to the people of the Democratic People's Republic of Korea regardless of any political and security issues. He also welcomes the slight increase in non-governmental exchanges on the humanitarian situation, which must be sustained.

48. The Special Rapporteur commends the efforts of the Secretary-General to continue supporting the dialogue and reconciliation between the Democratic People's Republic of Korea and the Republic of Korea. In that connection, he regrets that the Government of the Democratic People's Republic of Korea abruptly reversed its decision for the Secretary-General to visit the Kaesong Industrial Complex in May 2015 without providing any explanation. He finds that decision very unfortunate.

III. Pursuing the accountability track

49. The Special Rapporteur remains convinced that the accountability track must be pursued urgently, in parallel with sustained efforts to seek engagement with the Democratic People's Republic of Korea. It is an irreversible process that the authorities will have to face sooner or later.

50. In his view, issues around accountability should be addressed at an early stage and with long-term strategies in mind. A process of reflection and discussion on possible accountability mechanisms and processes should start as soon as possible. This should not be done, as in previous instances with other countries, at the last minute of a change process.

51. The Special Rapporteur remains convinced that the Security Council should refer the situation in the Democratic People's Republic of Korea to the International Criminal Court, as recommended by the commission of inquiry and subsequently encouraged by the General Assembly (A/HRC/25/63, para. 94 (a), and General Assembly resolution 69/188, para. 8). The evidence and documentation gathered by the commission of inquiry and future investigations of the OHCHR office in Seoul would be of particular relevance and value to the prosecutor's work.

52. In the event that the International Criminal Court is seized of the matter, it will not seek to prosecute a large number of alleged perpetrators. To that end, the Special Rapporteur is of the opinion that a group of experts should meet to discuss a future accountability mechanism for violations committed by the Democratic People's Republic of Korea. The establishment of an ad hoc international tribunal for the Democratic People's Republic of Korea by the United Nations, as proposed by the

commission of inquiry (A/HRC/25/63, para. 87, and A/HRC/25/CRP.1, para. 1201), is one option to consider.

53. A key endeavour to lay the ground for achieving accountability is the mapping of perpetrators of (grave) human rights violations and the chain of command. It is of utmost importance that an analysis of the full structure/architecture of the regime, with the functions and role of the main officials and units, be prepared. The OHCHR office in Seoul can play an important role in that regard and contribute to that important task.

54. In that context, the Special Rapporteur recalls the principle of command and superior responsibility under international criminal law, whereby military commanders and civil superiors can incur personal criminal responsibility for failing to prevent and repress crimes against humanity committed by persons under their effective control.

55. In addition to a possible referral to the International Criminal Court, the Security Council, as encouraged by the General Assembly, should consider the scope for effective targeted sanctions against those who appear to be most responsible for acts that the commission deemed to constitute crimes against humanity. While the Council has yet to consider taking action on the matter, the Special Rapporteur welcomes the steps that some Member States have begun to take on a bilateral basis in that direction.

56. The Special Rapporteur recalls that another important avenue for achieving accountability is the exercise by Member States of universal jurisdiction in the event that any relevant individuals suspected of having committed human rights violations fall under their jurisdiction, in which case, in accordance with their national legal provisions, they will have to investigate and prosecute such individuals.

57. Furthermore, in the event that the two Koreas reunite one day, the peace and reconciliation process that would ensue should not overlook the importance of justice and accountability for past human rights violations. The Special Rapporteur underscores that any transitional justice process should seek the truth and ensure accountability and redress for the victims, in parallel with the work of an international accountability mechanism. In that regard, the evidence and documentation gathered by the commission of inquiry and the OHCHR office in Seoul will again prove most pertinent.

58. In that connection, the Special Rapporteur wishes to echo the recommendation made by the commission of inquiry that "urgent accountability measures should be combined with a reinforced human rights dialogue, the promotion of incremental change through more people-to-people contact and an inter-Korean agenda for reconciliation" (A/HRC/25/63, para. 87).

59. Finally, the Special Rapporteur calls upon Member States to continue the discussion on the issue of accountability and to consider including a reference in the forthcoming resolution of the General Assembly to the question of options for the prosecution of specific crimes, such as abduction, and the identification of key elements of a comprehensive prosecution strategy for the future, as well as exploring the different possible options available to secure justice and accountability mechanisms to address such crimes, and an in-depth mapping of the institutions and individuals responsible for the development and implementation of

policies leading to the commission of crimes against humanity and of the chain of command structure in the Democratic People's Republic of Korea. He stands ready to report on the issue at a future session of the Assembly.

IV. Efforts by the international community to address the human rights situation in the Democratic People's Republic of Korea

60. The following section must be read in conjunction with the forthcoming report of the Secretary-General on the situation of human rights in the Democratic People's Republic of Korea.

A. Action by the Security Council and latest Human Rights Council resolution

61. In December 2014, the General Assembly adopted with an overwhelming majority a landmark resolution on the situation of human rights in the Democratic People's Republic of Korea, paving the way for the consideration of the situation in the country by the Security Council, including a possible referral of the situation to the International Criminal Court. In late December, the Council met to discuss the situation, with considerable focus on the issue of abductions, and is expected to revisit the agenda on a regular basis in future. The Special Rapporteur looks forward to the next meeting on the matter in 2015 and reiterates his availability to brief the Council himself on human rights developments in the Democratic People's Republic of Korea.

62. In March 2015, the Human Rights Council adopted resolution 28/22, in which it extended the mandate of the Special Rapporteur for one year. It also renewed its condemnation in the strongest terms of the systematic, widespread and gross human rights violations and other human rights abuses committed in the Democratic People's Republic of Korea; welcomed the Security Council's decision to add the situation in the Democratic People's Republic of Korea to its agenda and the holding of a Council debate thereon on 22 December 2014; and requested OHCHR to present an oral update at the thirtieth session and a comprehensive report on its role and achievements, including its field-based structure, at the thirty-first session. It also acknowledged the Special Rapporteur's dialogue with representatives of the Democratic People's Republic of Korea in New York in October 2014 and urged the country through continuous dialogue to invite and cooperate fully with the Special Rapporteur, with unrestricted access to visit the country, and to promote technical cooperation with OHCHR. Furthermore, it decided to convene a panel discussion on the situation of human rights in the Democratic People's Republic of Korea, including the issue of international abductions, enforced disappearances and related matters, at its thirtieth session, in September 2015.

63. The Special Rapporteur welcomes those developments, as they present new opportunities to exert further pressure and maintain momentum on the human rights situation in the Democratic People's Republic of Korea.

B. Update on the establishment of the Office of the United Nations High Commissioner for Human Rights office in Seoul

64. The Special Rapporteur welcomes the opening of the OHCHR office in Seoul on 23 June 2015. He looks forward to the important work of the office to support his mandate, as provided by Human Rights Council resolution 25/25. He calls again upon the General Assembly to ensure that it can function with independence, has sufficient resources and is not subjected to reprisals or threats.

65. In relation to the third point, the Special Rapporteur notes with deep concern the series of threats issued by the authorities and media of the Democratic People's Republic of Korea against the Seoul office. On 23 June 2015, the Ministry of Foreign Affairs of the Democratic People's Republic of Korea issued a statement accusing the "hostile forces" in the international community led by the United States of America of using the field presence to plot against the Democratic People's Republic of Korea and "incite confrontation under the pretext of protecting human rights". On 30 March 2015, the Pyongyang Committee for the Peaceful Reunification of Korea released a statement threatening an attack against the then forthcoming office and accusing the Republic of Korea and the United States of orchestrating a human rights plot against the Democratic People's Republic of Korea. The statement specifically said: "we will never sit back and watch as South Korea hosts the United Nations office on human rights of DPRK in Seoul. As soon as the nest for an anti-DPRK (North Korea) smear campaign is in place in the South, it will immediately become the first target for our merciless punishment." In May 2015, the newspaper *Minju Joson* stated that "[the Democratic People's Republic of Korea] will never pardon but mercilessly punish those hell-bent on the anti-DPRK 'human rights' racket, whether they are the puppet forces or their masters or those going under the mask of any international body".[18]

66. This is not the first time that the Democratic People's Republic of Korea has issued a threat. On 9 June 2014, a spokesperson for the Pyongyang Committee for the Peaceful Reunification of Korea released a statement protesting against the OHCHR field office in the Republic of Korea, threatening punishment and attacks at those involved in the plan, as well as staff in the office, referring to the plan as a scheme led by the United States and the Republic of Korea.

67. The Special Rapporteur urges the authorities of the Democratic People's Republic of Korea to cease issuing such threats. He believes that it is totally unacceptable for the Government of a United Nations Member State to issue a statement that blatantly threatens punishment and attacks on a United Nations office and its staff members. He stresses that the Democratic People's Republic of Korea, as a member of the United Nations, has a responsibility under the Charter of the United Nations to protect the United Nations, its staff and its assets.

[18] *Minju Joson*, "DPRK will mercilessly punish those keen on 'human rights' racket against it", 13 May 2015.

C. Technical cooperation with the Democratic People's Republic of Korea

68. The Special Rapporteur regrets that the Democratic People's Republic of Korea has yet to resume dialogue on technical cooperation with OHCHR, despite the continued efforts of the latter to engage the Government. Pyongyang suspended dialogue in December 2014 on the eve of the Security Council meeting on the situation in the country. He hopes that the Government will respond positively to OHCHR efforts, with a view to improving the people's enjoyment of human rights in the Democratic People's Republic of Korea.

69. The Special Rapporteur stresses again that dialogue should not be linked to any political considerations but should be undertaken with a view to the implementation of the country's international human rights obligations, including the commitments made during the universal periodic review. He hopes that the Government will change its position and grant the office access to the country to assess the needs on the ground and explore with the Government possible avenues for substantive and meaningful cooperation.

70. The Special Rapporteur believes that it is first and foremost in the interest of the Democratic People's Republic of Korea, and ultimately for the sake of its own people, to engage with the international community in a real and meaningful manner.

D. Human Rights Council panel discussion

71. At the time of writing, OHCHR was preparing, pursuant to Human Rights Council resolution 28/22, a panel discussion on the Democratic People's Republic of Korea, including the issue of international abductions, enforced disappearances and related matters, to be held during the thirtieth session of the Council, in September 2015. The Special Rapporteur looks forward to a fruitful discussion and hopes that the panel will inform ways and means to further address the human rights situation in the country.

E. Special Rapporteur's meetings with United Nations leadership

72. In May 2015, the Special Rapporteur met in New York with, inter alia, the Secretary-General, the Assistant Secretary-General for Human Rights and the Assistant Secretary-General for Political Affairs. He welcomes the willingness expressed by all interlocutors to continue seeking engagement with the Democratic People's Republic of Korea. The Special Rapporteur was briefed on the steps taken by the United Nations system under the Human Rights Up Front framework, which he found encouraging. He requested regular updates on developments within the framework, to which his interlocutors kindly agreed.

73. The Special Rapporteur wishes to recall that the recommendations accepted by the Democratic People's Republic of Korea during the two universal periodic reviews remain particularly relevant for creating opportunities for engagement by all parties concerned, including United Nations agencies.

F. Human rights contact group

74. The Special Rapporteur remains convinced that concerted action by a committed group of Member States to engage the Democratic People's Republic of Korea on issues of concern pertaining to the human rights situation in the country can make a significant difference.

75. In March and June 2015, the Special Rapporteur met bilaterally in Geneva with a number of permanent representatives of Member States to seek the establishment of a human rights contact group, as recommended by the commission of inquiry, with a view to engaging directly with the Democratic People's Republic of Korea on a number of issues of concern.

76. The Special Rapporteur is pleased to report initial positive responses. He continues to help to facilitate the group's formation and looks forward to further updates. Once it is established, he hopes that the Democratic People's Republic of Korea will engage meaningfully with the group to make tangible progress on the human rights situation.

V. Conclusion and recommendations

77. **More than ever, the international community should stay the course in its efforts to address the human rights situation in the Democratic People's Republic of Korea profoundly and meaningfully. Victims and their relatives, both inside and outside the country, have suffered for far too long, and their demands for justice and accountability cannot go unheeded.**

78. **The Special Rapporteur continues to advocate the pursuance of a two-track strategy with respect to the situation of human rights in the Democratic People's Republic of Korea: efforts must be undertaken to ensure the accountability of those responsible for human rights violations, including through referral by the Security Council of the situation in the country to the International Criminal Court, while continuously seeking engagement with the authorities to bring relief to the people of the Democratic People's Republic of Korea.**

79. **In that regard, the Special Rapporteur wishes to make the following series of recommendations.**

80. **The Special Rapporteur calls upon the General Assembly to:**

(a) **Reiterate its condemnation of the long-standing and ongoing systematic, widespread and gross violations of human rights committed by the Government of the Democratic People's Republic of Korea;**

(b) **Reaffirm the responsibility of the international community to protect the people of the Democratic People's Republic of Korea and victims abroad from crimes against humanity, in view of the manifest failure of the Democratic People's Republic of Korea to protect its own population from such crimes;**

(c) **Condemn in the strongest terms the threats made by the Government of the Democratic People's Republic of Korea against the OHCHR office in Seoul and its staff members and ensure that the office can continue functioning with independence and sufficient resources;**

(d) Urge the Government of the Democratic People's Republic of Korea to invite the Special Rapporteur to undertake a fully fledged visit to the country as soon as possible and without any preconditions, in accordance with the terms of reference for country visits by special procedures mandate holders (see E/CN.4/1998/45), and more generally to cooperate with his mandate;

(e) Consider including a reference in its forthcoming resolution to the question of options for the prosecution of specific crimes, such as abduction, and the identification of key elements of a comprehensive prosecution strategy for the future, as well as exploring the different possible options available to secure justice and accountability mechanisms to address such crimes, and an in-depth mapping of the institutions and individuals responsible for the development and implementation of policies leading to the commission of crimes against humanity and of the chain of command structure in the Democratic People's Republic of Korea.

81. **The Special Rapporteur urges the Government of the Democratic People's Republic of Korea to:**

(a) Immediately halt all the human rights violations identified by the commission of inquiry in its report, which continue to this day, and by the Special Rapporteur in the present report;

(b) Abide by all the international human rights instruments that it has ratified;

(c) Take progressive steps to restrict or abolish the death penalty, notably by amending national legislation to ensure compliance with international law, specifically to restrict the application of the death penalty to crimes of intentional killing only and to ensure that all trials meet the highest standards of fairness;

(d) Dismantle all political prison camps and release and rehabilitate all political prisoners, with appropriate international verification and assistance;

(e) Allow all persons who have been abducted or forcibly disappeared, as well as their descendants, to return immediately to their countries of origin, and to expedite investigations into the fate of those missing in a transparent and verifiable manner;

(f) Allow separated families to reunite without delay and use unmonitored communication facilities, such as telephone, mail and e-mail;

(g) Expedite the ratification of the Convention on the Rights of Persons with Disabilities;

(h) Become a member of the International Labour Organization and abide by all the relevant conventions;

(i) Protect victims of human trafficking, particularly the women workers that it sends to other countries, and guarantee their physical safety;

(j) Resume dialogue with OHCHR on technical cooperation without delay;

(k) Cooperate with the United Nations human rights mechanisms, including the mandate of the Special Rapporteur, notably by granting them

access to the country and by presenting overdue reports to the relevant treaty bodies;

(l) Implement the recommendations accepted during the first and second cycles of the universal periodic review and allow access to stakeholders to verify their implementation;

(m) Engage genuinely in bilateral talks with the Republic of Korea in the context of the inter-Korean dialogue on issues of mutual interest (including the issue of separated families) and with Japan on the issue of abductions and abide by the terms of bilateral agreements concluded, first and foremost in the interest of the victims and their families.

82. The Special Rapporteur calls upon Member States to:

(a) Continue ensuring that the Security Council holds regular briefings on the situation in the Democratic People's Republic of Korea, with the participation of the High Commissioner for Human Rights and other relevant experts, including the Special Rapporteur;

(b) Take further steps towards achieving accountability on the part of those responsible for serious human rights violations in the Democratic People's Republic of Korea, including through referral by the Security Council of the situation in the country to the International Criminal Court and by making use of the principle of universal jurisdiction to realize and maximize the potential deterrent effect of the findings and recommendations of the commission of inquiry and thus help to protect the population of the Democratic People's Republic of Korea from further crimes against humanity;

(c) Facilitate the work of the OHCHR office in Seoul and the Special Rapporteur and provide them with timely access to relevant information and potential witnesses, especially escapees, who may have information crucial to ensuring institutional and individual accountability;

(d) Engage with the Government of the Democratic People's Republic of Korea to take specific steps to facilitate and verify the implementation of the recommendations accepted during the first and second cycles of the universal periodic review, including in relation to separated families;

(e) Protect the people of the Democratic People's Republic of Korea who have sought refuge in, or are transiting through, a Member State's territory by abiding by the principle of non-refoulement;

(f) Combat the practice of forced labour by the Democratic People's Republic of Korea of overseas workers operating on their territories, including by conducting thorough inspections at worksites on a regular basis and forcefully repatriating those responsible for violations;

(g) Fully involve civil society actors in Member States' efforts to address the situation in the Democratic People's Republic of Korea;

(h) Activate the human rights contact group recommended by the commission of inquiry, with a view to improving the situation of human rights in the Democratic People's Republic of Korea on the ground.

83. The Special Rapporteur calls upon the United Nations system as a whole to continue its efforts to address the grave human rights situation in the Democratic People's Republic of Korea in a coordinated and unified manner, in line with the Secretary-General's Human Rights Up Front strategy.

84. Finally, the Special Rapporteur calls upon civil society to continue its important work in raising awareness of the human rights situation in the Democratic People's Republic of Korea, including by reporting on human rights violations committed by the Government of the Democratic People's Republic of Korea.